

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANA QUINONES,
Plaintiff

v

UNITED STATES POSTAL
SERVICE and HALINA D.
MITURA and MITURA
FISHING CORP.,
Defendants

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:

CIVIL ACTION NO:

COMPLAINT AND CLAIM OF TRIAL BY JURY AS TO COUNTS II AND III

JURISDICTION:

1. This is an action pursuant to the Plaintiff, a private individual, against the United States Postal Service under the Federal Tort Claims Act alleging that the Plaintiff sustained personal injuries as a result of the negligence of an employee of the postal service in the operation of a motor vehicle during the course of his employment. This Court has jurisdiction under 28 USC Section 1346(b)

2. The Complaint also includes an action based on negligence against Mitura Fishing Corp., a private Massachusetts corporation, with a principal office at 84 Front Street, New Bedford, Massachusetts, as owner of a motor vehicle involved in the incident and against Halina Mitura of 258 Reservoir Street, Norton, Massachusetts, the operator of the said vehicle. Jurisdiction of the claims against the corporation and Mitura lies pursuant to 28 USC Section 1367(a).

THE PARTIES:

3. Plaintiff is an individual residing at 76 Paul Bunker Drive, in the City of Taunton, County of Bristol, in the Commonwealth of Massachusetts.

4. Defendant United States Postal Service has an address at National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, Missouri 63166-6640.

5. Defendant Mitura Fishing Corp. is a Massachusetts Corporation with a principal office at 84 Front Street, New Bedford, Massachusetts.

6. Defendant Halina D. Mitura is an individual residing at 258 Reservoir Street, Norton, Bristol County, Massachusetts.

GENERAL ALLEGATIONS:

7. On or about June 5, 2009 in the early afternoon Plaintiff was operating her vehicle on a roadway traversing the parking lot of the Mill River Plaza Mall located between Washington Streets and Cohannet Streets, Taunton, Bristol County, Massachusetts.

8. As the Plaintiff was proceeding on the said roadway she observed a United States Postal Service truck parked at the westerly curb of the said roadway.

9. As Plaintiff guided her vehicle around the parked postal truck suddenly and without warning it pulled away from the curb towards its left and into the Plaintiff's path.

10. Plaintiff sounded her horn and steered her vehicle further to the left to avoid being struck by the postal truck.

11. As the Plaintiff pulled to her left in an attempt to avoid the postal truck Plaintiff's vehicle was struck by a pick up truck operated by Defendant Halina D. Mitura and owned by Defendant Mitura Fishing Corp. which was then and there entering the said roadway from a parking lot on the easterly side thereof.

12. At the time and place of the accident the postal truck was operated by an employee of the United States Postal Service during the course of his employment.

13. The operator of the postal truck was negligent in pulling away from the curb into the Plaintiff's path of travel.

14. Defendant Mitura was negligent in entering the said roadway into the path of the Plaintiff's motor vehicle under the circumstances then existing.

15. Defendant Mitura was then and there operating the pick up truck for the benefit of Mitura Fishing Corp.

16. As a result of the negligence of the Defendants the Plaintiff sustained personal injuries including cervical thoracic and thoracolumbar sprains and strains, acute post traumatic headaches and

acute muscle spasms. The said physical injuries caused the Plaintiff physical pain and mental anxiety.

17. The Plaintiff was treated at Morton Hospital, Taunton, Massachusetts, thereafter by Doctor Neeta Ohri and was under the care of Bay Chiropractic, P.C. from July 20, 2009 through February 12, 2010 for treatment of the injuries sustained in the accident.

18. The medical expenses incurred by the Plaintiff include \$394.00 for Morton Hospital and \$4,512.15 for Bay Chiropractic, P.C.

19. On May 16, 2011 the Plaintiff mailed overnight mail, return receipt requested to the United States Postal Service a notice and claim pursuant to 28 U.S.C. Section 2675(a).

20. A copy of the said notice of claim marked "A" is attached hereto.

21. The United States Postal Service denied the Plaintiff's claim by letter dated August 4, 2011, a copy of which marked "B" is attached hereto.

COUNT I

NEGLIGENCE

Re: Ana Quinones

Vs: United States Postal Service

22. Plaintiff herein adopts each of the allegations in paragraphs 1 – 21 as if each were fully set forth herein.

WHEREFORE, the Plaintiff demands judgment against the United States Postal Service in such amount as is reasonable to compensate her for all of her damages suffered and attorneys' fees and costs of this action.

COUNT II

NEGLIGENCE

Re: Ana Quinones

Vs: Halina D. Mitura

23. Plaintiff herein adopts each of the allegations in paragraphs 1 – 22 as if each were fully set forth herein.

WHEREFORE, the Plaintiff demands judgment against Halina D. Mitura in such amount as is reasonable to compensate her for all of her damages suffered and attorneys' fees and costs of this action.

COUNT III

NEGLIGENCE

Re: Ana Quinones

Vs: Mitura Fishing Corp.

24. Plaintiff herein adopts each of the allegations in paragraphs 1 – 23 as if each were fully set forth herein.

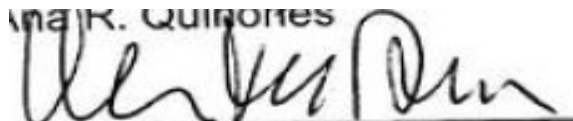
WHEREFORE, the Plaintiff demands judgment against Mitura Fishing Corp. in such amount as is reasonable to compensate her for all of her damages suffered and attorneys' fees and costs of this action.

Plaintiff, Ana Quinones,

By her attorneys,



Jordan H. F. Fiore, Esquire
1 Taunton Green
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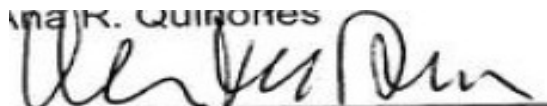
PLAINTIFF'S CLAIM OF TRIAL BY JURY AS TO COUNTS II AND III

Plaintiff claims a trial by jury as to counts II and III of her Complaint.

Plaintiff, Ana Quinones,
By her attorneys,



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ORLANDO F. DE ABREU

DANIEL F. DE ABREU
OF COUNSEL

MAILING ADDRESS:
P.O. Box 848
TAUNTON, MA 02780

May 16, 2011

Overnight Mail
Return Receipt Requested
No. EB597036715US

Chief Counsel
National Tort Center
U. S. Postal Service
P. O. Box 66640
St. Louis, MO 63166-6640

Pursuant to 28 USC Section 2675(a) and all other applicable authority, if any, notification of an incident that occasions liability under the Federal Tort Claims Act is given, and a claim for money damages in the amount of \$13,000.00 for personal injury and property damage by reason of the incident is presented.

This notice and claim are hereby presented by Ana R. Quinones of 76 Paul Bunker Drive, Taunton, Bristol County, Massachusetts 02780.

1. Quinones is 40 years of age having been born on December 14, 1970.
2. At the time of the accident she was single.
3. Place and Date of Incident: The incident on which this claim is based occurred at about 2:20 P.M. on June 5, 2009 on the roadway traversing the parking lot of Mill River Plaza from Washington Street to Cohannet Street, near the Dunkin Donuts parking lot located off Washington Street, Taunton, Massachusetts 02780.

4. Description of Incident: As Quinones was operating her vehicle, a 2001 Saturn, Mass Registration 507 WTI, in a southerly direction on the roadway traversing the parking lot of the Mill River Plaza mall, she had to steer her vehicle to the left because of a U.S. Postal Service truck stopped at the curb on the westerly side of the roadway. As she was passing the postal truck, it suddenly and without forewarning pulled away from the curb towards the left into Quinones' travel path. She sounded her horn and steered her vehicle further to

pickup truck entering the roadway from the Dunkin Donuts parking lot located on the easterly side of the roadway. The pickup truck was in the process of entering the roadway to proceed in a northerly direction. This motor vehicle was a 2003 Ford Pickup Truck, Registration No. Mass K38493 operated by Halina Mitura of 258 Reservoir Street, Norton, Mass. 02766 and owned by Mitura Fishing Corp., 84 Front Street, New Bedford, MA. The operator of the mail truck did not identify himself to Quinones and though the alleged statement of the operator is quoted in the report prepared by the investigating police officer, the name is not disclosed therein.

5. Witnesses: names and addresses of witnesses to the accident:

- a) The claimant;
- b) The operator of the U.S. Postal Service mail delivery truck, whose name and address is not known to the claimant,
- c) The operator of the motor vehicle which struck the claimant's, Halina D. Mitura of 258 Reservoir Street, Norton, MA 02766

6. Personal Injury: As a result of the accident I suffered acute moderate/severe cervical, thoracic and thoracolumbar sprains/strains, acute post-traumatic headaches and acute muscle spasm. I sought treatment at Morton Hospital, Taunton, Massachusetts the next day, where I was prescribed muscle relaxers, and saw Dr. Neeta Ohri twice thereafter. He prescribed medication for pain relief. Because of persistent pain and discomfort to my neck and upper back, left shoulder and thoracolumbar area along with headaches, I went under the care of Bay Chiropractic, P.C. on July 20, 2009 and remained under its care until about February 12, of 2010.

The medical bills for my treatment are as follows:

Morton Hospital	\$394.00
Bay Chiropractic, P.C.	<u>\$4,512.15</u>
	\$4,906.15

7. Property Damage: My vehicle incurred property damage to the driver's side front fender and both doors which cost \$1,316.44 to repair. The repairs were performed at Euro Tech, 38 Broadway, Raynham, Massachusetts.

8. Automobile Insurance: My motor vehicle was insured for collision as well as Personal Injury Protection benefits with the Commerce Insurance Company of 11 Gore Road, Webster, MA 01570 (File No. RVT 516/NPJR55).

My insurance company paid to my medical providers a total of \$4,894.00 under the PIP coverage. My insurance company paid \$816.44 of the cost to repair the property damage and I paid the amount of the deductible which was \$500.00.

CLAIM FOR DAMAGES

I claim a total of \$13,000.00 for personal injuries and property damage sustained by me by reason of the incident described above.

This amount is the aggregate of the following:

The reasonable cost of the medical care which I required in treatment of the injuries I sustained in the accident (\$5,000.00); and the pain and suffering which I endured (\$7,500.00) and the deductible which I had to pay to repair the property damage to my motor vehicle (\$500.00). Submitted with this claim are the reports of Morton Hospital and of Bay Chiropractic indicating the nature and extent of my injuries, the nature and extent of treatment, and my complaints.

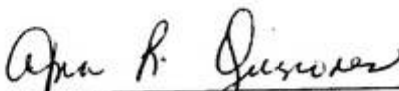
Also enclosed is copy of itemized bills for hospital and medical expenses actually incurred by me (except for Dr. Ohri's bill, a copy of which I do not have, and the amount of which is estimated at \$100.00).

I further enclose copy of repair order from Euro-Tech Auto, Inc.

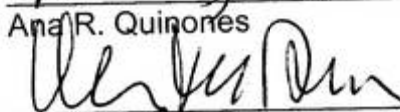
I declare under the pains of penalties of perjury that the amount of these claims covers only damages and injuries caused by the accident described above and I agree to accept such amount in full satisfaction and final settlement of this claim.

Please send all communications concerning this claim to my Attorney, Orlando F. de Abreu, 63 Winthrop Street, P. O. Box 848, Taunton, MA 02780, who represents me in this matter.

Signed under the pains and penalties of perjury this 18th day of May, 2011.



Ana R. Quinones



Orlando F. de Abreu
her attorney and counsel
63 Winthrop Street, P. O. Box 848
Taunton, MA 02780
Tel: (508) 822-7493

TORT CLAIMS
ACCOUNTING SERVICE CENTER



CERTIFIED NO: 7008 1140 0003 4050 6557
RETURN RECEIPT REQUESTED

August 04, 2011

LAW OFFICES OF ORLANDO F. DE ABREU
63 WINTHROP STREET
TAUNTON, MA 02780-4261

RE: Claimant: ASO ANA R QUINONES
USPS File No: TC201127759

Dear Sir:

This is in reference to the administrative claim you filed under the provisions of the Federal Tort Claims Act, as a result of damages or injuries allegedly sustained on or about June 5, 2009.

The Postal Service is not legally obligated to pay all losses which may occur, but only those caused by the negligent or wrongful act or omission of an employee acting in the scope of his/her employment. We are guided in our determination by all the information available to us, including the reports of our personnel and any other persons acquainted with the facts. Our investigation determined that you fell in the street in front of the Post Office and not on the premises of the Post Office.

As to the incident at issue, an investigation of this matter failed to establish a negligent act or omission on the part of the U.S. Postal Service or its employees. While we regret any damages or injuries that may have occurred, we cannot accept legal liability for them. Accordingly, this claim is denied.

In accordance with 28 U.S.C. § 2401(b) and 39 C.F.R. 912.9(a), if dissatisfied with the Postal Service's final denial of an administrative claim, a claimant may file suit in a United States District Court no later than six (6) months after the date the Postal Service mails the notice of that final action. Accordingly, any suit filed in regards to this denial must be filed no later than six (6) months from the date of the mailing of this letter, which is the date shown above. Further, note the United States of America is the only proper defendant in a civil action brought pursuant to the Federal Tort Claims Act and such suit may be heard only by a federal district court.

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Alternatively, and in accordance with the regulations set out at 39 C.F.R. 912.9(b), prior to the commencement of suit and prior to the expiration of the six (6) month period provided in 28 U.S.C. § 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request for reconsideration with the postal official who issued the final denial of the claim.

Upon the timely filing of a request for reconsideration, the Postal Service shall have six (6) months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. § 2675(a) shall not accrue until six (6) months after the filing of the request for reconsideration.

A request for reconsideration of a final denial of a claim shall be deemed to have been filed when received in this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernita J. Moore". The signature is fluid and cursive, with the first name "Vernita" and last name "Moore" clearly distinguishable.

Vernita J. Moore
Accounting & Control Specialist

cc: Susan Nolan
Tort Claims Coordinator
Case No: 060-11-0602A